

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

CRIMINAL 92-029CCC

CANDELARIO QUINTANA-MARTINEZ

Defendant

O R D E R

Defendant Candelario Quintana-Martínez filed a Notice of Appeal on May 31, 2006 (docket entry 135) from an Order entered on May 4, 2006 (docket entry 134). Although said Notice of Appeal was late under Fed.R.App.P. 4(b)(1)(A) for it was filed after the ten-day period provided therein, since it was filed within the thirty days immediately following the ten-day period the Court of Appeals has transmitted it to us for a ruling on whether the time for filing the notice of appeal will be enlarged thereby considering it to be timely filed as allowed by Rule 4(b)(4) (see docket entry 137).

While Fed.R.App.P. 4(b)(4) allows the district court to extend the time in which a party may appeal for a period not to exceed thirty (30) days from the end of the ten-day period provided in Rule 4(b)(1)(A), the court must find "good cause" or "excusable neglect" in defendant's failure to timely file a notice of appeal. In this instance, we note that defendant is imprisoned at Butner. While the record does not show when was the May 4, 2006 Order notified to him, it is fair to assume that even if it was sent to him immediately it took a few days to reach him at the institution. The record also fails to show when was the letter containing the Notice of Appeal deposited in Butner's internal mail system. Cf. Fed.R.App.P. 4(c)(1).¹ However, the envelope was postmarked in North Carolina on May 23, 2006, only a few days

¹ Rule 4(c)(1) states that "[i]f an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing."

after the May 18, 2006 deadline to file the Notice of Appeal. See Fed.R.App.P. 26. Given that defendant is currently confined, that the record fails to show when was the Order appealed from notified to him, that it is fair to assume that it took several days to reach him, and that the Notice of Appeal was mailed to this Court on May 23, 2006, only a few days after the time to appeal had expired, we find that there is good cause to enlarge the time for filing the appeal. Accordingly, pursuant to Fed.R.App.P. 4(b)(4), we hereby extend the time to file defendant's notice of appeal, and consider defendant's Notice of Appeal filed on May 31, 2006 as timely.

A copy of this Order shall be forwarded to the Court of Appeals forthwith.

SO ORDERED.

At San Juan, Puerto Rico, on August 7, 2006.

S/CARMEN CONSUELO CEREZO
United States District Judge